



U.S. Department of Justice

United States Attorney
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Civil Division

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August 26, 2022

Via ECF

Hon. Matthew W. Brann, C.U.S.D.J.
United States District Court
Herman T. Schneebeli Federal Bldg.
& U.S. Courthouse
240 West Third Street
Williamsport, PA 17701

**Re: *Berutti v. Wolfson*, Civil Action No. 22-cv-04661
Status Report and Proposed Briefing Schedule**

Dear Chief Judge Brann:

This Office represents Chief Judge Freda L. Wolfson and Clerk William T. Walsh (collectively, the “Federal Defendants”) in their official capacities in the above-referenced matter, which seeks to prevent the continued enforcement of Standing Orders 2021-08 and 2022-01 in the District of New Jersey and challenge the legitimacy and efficacy of COVID-19 vaccines and testing.

We write to follow up on our August 22, 2022 letter and advise the Court that Chief Judge Wolfson issued a new standing order on August 23, 2022, No. 2022-02, which is attached.¹ We also write on behalf of all counsel to advise the Court that the parties met and conferred and agree that the new standing order moots the exigent relief sought by Plaintiffs in their motion for a temporary restraining order (“TRO”), ECF No. 7, although Plaintiffs seek to construe their TRO motion as a motion for a preliminary injunction.

The Federal Defendants will oppose Plaintiffs’ motion for a preliminary injunction and also intend to file a motion to dismiss Plaintiffs’ amended complaint.

¹ See also <https://www.njd.uscourts.gov/sites/njd/files/StandingOrder2022-02COVIDProtocols.pdf> (last visited Aug. 23, 2022).

For the sake of efficiency for the parties and the Court, the parties have agreed to the following consolidated briefing schedule to address both filings:

- October 17—Federal Defendants’ motion to dismiss and opposition to preliminary injunction motion;
- November 14—Plaintiffs’ opposition to motion to dismiss and reply in further support of preliminary injunction motion;
- December 5—Federal Defendants’ reply in further support of motion to dismiss.

We thank the Court for its consideration of this briefing schedule. If this schedule is acceptable to Your Honor, we kindly request that you “so order” this letter and have the clerk file it on the docket. We are also available to discuss this matter at Your Honor’s convenience.

Respectfully submitted,

PHILIP R. SELLINGER
United States Attorney

By: /s/ John F. Basiak Jr. _____
JOHN F. BASIAK JR.
JOHN T. STINSON
Assistant U.S. Attorneys
Attorneys for Federal Defendants

cc: All Counsel (via ECF)

August 23, 2022

9:43 A.M.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE: UPDATED COVID-19 PROTOCOLS :
REGARDING VACCINATION AND TESTING, :
MASKING, AND SOCIAL DISTANCING OF : **STANDING ORDER 2022-02**
VISITORS TO COURT FACILITIES AND :
CRIMINAL DEFENDANTS; Partial Recission of :
 Standing Orders 2021-08 and 2022-01 :

WHEREAS, in March 2020, in response to the spread of COVID-19, a National Emergency, and New Jersey State of Emergency and Public Health Emergency were initially declared; and

WHEREAS, while the New Jersey Public Health Emergency was terminated in June 2021, on September 13, 2021, when the National Emergency and New Jersey State of Emergency were still in effect, the United States District Court for the District of New Jersey (“this Court”) entered Standing Order 2021-08, requiring that all visitors to Court facilities (with few exceptions) provide proof of full vaccination or a negative COVID-19 test result as a condition of entry into Court facilities; and

WHEREAS, this Court did so in response to policies announced, during the prior month, by the President of the United States (“President Biden”), the Governor of the State of New Jersey (“Governor Murphy”) and the New Jersey State Judiciary, requiring that their respective employees become fully vaccinated or submit to regular COVID-19 testing, and President Biden’s subsequent mandate, removing the testing option and requiring that all Executive Branch employees be fully vaccinated; and

WHEREAS, the virulent Omicron variant of COVID-19 was then discovered in November 2021, and due to its high transmissibility, required additional precautionary measures,

causing Governor Murphy to continue the State of Emergency and to declare a new Public Health Emergency, and to require certain health care and high-risk congregate settings to maintain a policy requiring proof of booster, as well as full vaccination; and

WHEREAS, as a result of such precautionary measures having been taken, by early March 2022, New Jersey showed considerably improved data on the rate of transmission and the number of hospitalizations and daily cases, prompting Governor Murphy to terminate the Public Health Emergency, but continue the State of Emergency; and

WHEREAS, on March 16, 2022, this Court entered Standing Order 2022-01, applying the CDC's recently announced tool, "COVID-19 Community Levels," which assigns each county into a "low," "medium" or "high" category, based upon real-time COVID-19 transmissibility within each community, and Standing Order 2022-01 specified that, regardless of vaccination status or individual risk, employees and visitors to Court facilities were only required to wear masks indoors in public when the Community Level was "high" in the county in which the Court facility was located; and

WHEREAS, however, Standing Order 2022-01 created a masking exception in connection with prospective jurors, who were still required to wear masks in the courtroom, during the jury selection process of all civil and criminal jury trials in this District, although members of a sitting, fully vaccinated jury were not required to wear masks; and

WHEREAS, Standing Order 2022-01 also provided that social distancing was no longer required, except that 3' social distancing was to be maintained between jurors seated in this Court's jury boxes, whether the jurors were masked or not, during civil and criminal jury trials conducted in this District; and

WHEREAS, Standing Order 2022-01 further continued the requirement in Standing Order 2021-08 that criminal defendants present a negative COVID-19 test result as a condition of being transported from detention facilities to this District’s Court facilities; and

WHEREAS, since the entry of Standing Order 2022-01 in March 2022, New Jersey has witnessed stable rates on key metrics, such as the number of hospitalized patients, and patients in intensive care and on ventilators, in part due to widely available treatments that reduce the likelihood of severe illness and death, such as antiviral medications and monoclonal antibodies; and

WHEREAS, on August 11, 2022, the CDC issued updated “Guidance for Minimizing the Impact of COVID-19 on Individual Persons, Communities, and Health Care Systems,” observing that high levels of vaccine-induced and infection-induced immunity, as well as the availability of effective treatments and prevention tools, have significantly reduced the risk of severe illness, hospitalization and death; and

WHEREAS, the CDC now recommends masking in areas of high community levels, and diagnostic testing for active infection only of symptomatic persons or those with known or suspected exposure to someone with COVID-19, except that it suggests the use of screening testing of asymptomatic persons with no known exposure, irrespective of vaccination status, in high-risk congregate settings, such as correctional facilities; and

WHEREAS, the CDC has further relaxed its guidance, so as to recommend contact tracing only in health care and certain high-risk congregate settings, and to remove its earlier recommendation of quarantining exposed persons, while continuing its recommendation that infected persons isolate for five days and then mask up for an additional five days; and

WHEREAS, in light of this updated CDC guidance, on August 15, 2022, Governor Murphy signed Executive Order No. 302, lifting the requirements, ordered in August to October 2021, that school districts and childcare settings maintain a policy requiring their unvaccinated workers to undergo routine testing, effective as of that date, and similarly lifting that requirement of state contractors, effective as of September 1, 2022; and

WHEREAS, the Biden administration has also announced changes in policy, effective August 22, 2022, under which agencies will cease COVID-19 testing aimed at unvaccinated employees, and will stop asking employees, visitors and contractors if they are vaccinated, prior to entering federal buildings; and

WHEREAS, this Court continues to take reasonable and prudent actions to protect Court employees and the public from COVID-19, while preserving its core mission of serving the public through the fair and impartial administration of justice;

NOW, THEREFORE, based upon all of the foregoing, **IT IS HEREBY ORDERED**, effective immediately, that:

1. The requirement in Standing Order 2021-08 that visitors seeking entry into any U.S. Courthouse (housing the U.S. District Court and U.S. Bankruptcy Court) or any site of a Probation or Pretrial Services Office, in the District of New Jersey (“Court facilities”), provide proof of full vaccination or a negative COVID-19 test result as a condition of entry is rescinded; and
2. Consistent with current CDC guidance, the wearing of appropriate masks is required indoors in public only in those Court facilities located in a county which has a current COVID-19 community level of “high”; and

3. The blanket requirement in Standing Order 2022-01 that prospective jurors be masked during the jury selection process is rescinded, and those individuals will be required to wear masks only as provided in Paragraph 2 above; and

4. Notwithstanding the provisions of Paragraph 2 and 3 above, a presiding judicial officer may, for any reason, direct that appropriate masks be worn or removed, by any or all persons, during in-Court proceedings before that judge; and

5. Except as otherwise directed by a judicial officer, as provided in Paragraph 4 above, the wearing of appropriate masks will be permitted by any person, in any Court facility, at any time; and

6. Social distancing is no longer required in any Court facility, and the requirement in Standing Order 2022-01 that jurors seated in this Court's jury boxes maintain 3' of social distancing is rescinded; and

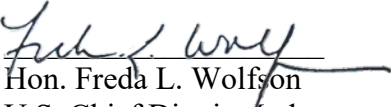
7. Consistent with current CDC guidance, suggesting the use of screening testing of asymptomatic persons with no known exposure, irrespective of vaccination status, in high-risk congregate settings, the requirement in Standing Order 2022-01 that criminal defendants present a negative COVID-19 test result as a condition of being transported from detention facilities to this District's Court facilities remains in effect; and

8. The United States Attorney's Office should notify the United States Marshals Service of any in-person hearing for an in-custody defendant seven days prior to the hearing to ensure that the detention center housing that defendant has sufficient time to administer the test, and to avoid any unnecessary testing for canceled or moved hearings.

9. The United States Marshal, his Deputies, and the Court Security Officers shall enforce this Order; and

10. This Standing Order shall remain in effect until amended or vacated. This District's Court Security Committee will continue to monitor COVID-19 conditions, including the COVID-19 community levels for the counties in this District, i.e., Camden, Essex and Mercer, and will amend this Order as circumstances require.

August 23, 2022


Hon. Freda L. Wolfson
U.S. Chief District Judge
District of New Jersey